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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,248	09/30/2003	Anastasios S. Maurudis	2376.1001-003	3497

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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,248	<b>Applicant(s)</b> MAURUDIS ET AL.	
	<b>Examiner</b> Russell Frejd	<b>Art Unit</b> 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3.11.04</u> . | 6) <input type="checkbox"/> Other: _____  |

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***Examination of Application #10/675,248***

1. Claims 1-9 and 11-28 of application 10/675,248, filed on 30-September-2003, are presented for examination. This application is a Continuation of 09/713,732, filed on 15-November-2000, now USP 6,741,958, which is a Continuation of 09/096,774, filed on 12-June-1998, now USP 6,173,247.

***Specification Objections***

2. The disclosure is objected to because the information in the Related Applications section needs to be updated to reflect the current patent numbers associated with applications 09/713,732 and 09/096,774.

***Claim Objections under 37 CFR 1.75(d)(1)***

3. Claims 8 and 18 are objected to under 37 CFR 1.75(d)(1), wherein:

In claim 8 [line 2] and claim 18 [line 3], the phrase "indicating number of times" is understood to mean "indicating *the* number of times."

***Claim Rejections under 35 U.S.C. § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

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4.1 Claims 1-9 and 11-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention claims (claim 1 preamble), "*A method of modeling a digital processor*".

4.2 MPEP Section 2106(IV)(B)(2)(b)(ii) provides that a statutory computer process is determined not by how the computer performs the process, but by what the computer does to achieve a practical application with a useful, concrete and tangible result. For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory, while a claimed process for digitally filtering noise employing the mathematical algorithm is statutory. The long line of cases in this area that are referred to in MPEP Section 2106(IV)(B)(2)(b)(ii) exemplify this requirement, by utilizing in the claim language, terms such as controlling, executing, changing and removing. In view of the aforementioned requirement and the interim guidelines for 101 eligibility, the Examiner respectfully contends that the claim language of independent claims 1, 11 and 20, do not claim a practical application with a tangible result, that language claiming: (in claim 1) **loading** (emphasis added) operations and data representations of a target processor defined in a high level programming language; and **simulating** the target processor executing certain commands to provide a model of the target processor data representations and operations, the simulating **generating** bit level representation model data of the results of the target processor having executed certain commands.

Similarly, claims 11 and 20 are directed to a computer-readable medium and an apparatus for modeling the digital processor, comprised of software instructions and a "source"

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(i.e. software module) for completing the steps for loading, simulating , and generating the digital processor model as discussed above.

**4.3** For at least these reasons, the Examiner respectfully posits that the claims of the present invention do not meet the criteria for a statutory process. Accordingly, the claims are determined to be a program per se, consisting of software modules that implement the method for modeling a digital processor, whereby the method does not manipulate appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

### ***Double Patenting Rejections***

**5.** The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321[c] may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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**5.1** Claims 1-9 and 11-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of USP 6,741,958. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention and the patent are each directed to a method of modeling a digital processor [see the preambles of claim 1 in the application and the '958 patent. Furthermore, the claims of the present invention, especially claims 1, 11 and 20, are primarily directed to the identical claimed steps of the patent. For instance, claims 1 and 11 claim "loading" operations [line 2], and claim 20 claims "a source of" operations [line 2], while the '958 patent claims "defining" operations [col. 14, line 49]. These, apart from the present preliminary amendment changing "said" to "the", are the only substantive differences between the claims of the present invention and the '958 patent noted above. Also, claims 2-9 of the present invention and claims 2-9 of the '958 patent are identical in scope, and claims 12-19 and 21-28 of the present invention parallel claims 2-9 of the present invention. For at least these reasons, one of ordinary skill would have found it obvious that the modeling of a digital processor of the present invention and the patent, are not patentably distinct in so far as the specifications of each application support the identical critical features noted above.

### ***Allowed Claims***

**6.** Claims 1-9 and 11-28 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above.

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***Response Guidelines***

7. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

**7.1 Any response to the Examiner in regard to this non-final action should be**

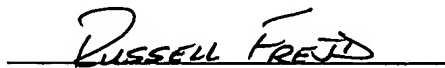
**directed to:** Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

**mailed to:** Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

**or faxed to:** (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 25-May-2006

  
\_\_\_\_\_  
RUSSELL FREJD  
PRIMARY EXAMINER